Auto Convoy Co. *and* Jesse S. Cabrera

Teamsters, Chauffeurs, Warehousemen, Helpers and Food Processors, Local Union 657, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* Jesse S. Cabrera. Cases 23-CA-8818 and 23-CB-2632

13 September 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 8 March 1983 Administrative Law Judge Donald R. Holley issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondents each filed an answering brief to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions[1] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

[1] The General Counsel has alleged in the complaint that Respondent Union violated Sec. 8(b)(1)(A) of the Act by threatening to terminate Jesse Cabrera from his job as the Union's business agent if Cabrera persisted in seeking a position on the Teamsters Joint Council. Since Cabrera was an employee of the Union when that threat occurred, we agree with the Administrative Law Judge that the unfair labor practice alleged against the Union, if any, would be circumscribed by Sec. 8(a)(1) of the Act, and not Sec. 8(b)(1)(A) as the General Counsel has alleged. Accordingly, we adopt the Administrative Law Judge's dismissal of this complaint allegation on the basis that the General Counsel has not properly framed the affirmative case to support a finding of any unfair labor practice. Accord: *Typographical Union Local 650 (The Daily Breeze)*, 221 NLRB 1048, fn. 1 (1975).

DECISION

STATEMENT OF THE CASE

DONALD R. HOLLEY, Administrative Law Judge: Upon charges filed by Jesse Cabrera (herein called Cabrera) against Teamsters, Chauffeurs, Warehousemen, Helpers and Food Processors, Local Union 657, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called Respondent Union or Local 657) and Auto Convoy Co. (herein called Respondent Employer or Auto Convoy), the Regional Director for Region 23 of the National Labor Relations Board (herein called the Board) issued a consolidated complaint on April 28, 1982, alleging, in substance, that: Respondent Union violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended (herein called the Act), in January 1982 by threatening to fire Cabrera from his job as a business agent of Local 657 if he ran for union office, and by thereafter causing Auto Convoy to terminate Cabrera from a truckdriver position because he had run for and been elected to the above-mentioned union office; and that Respondent Employer violated Section 8(a)(1) and (3) of the Act by discharging Cabrera from its employ at Respondent Union's request.

This case was heard in San Antonio, Texas, on September 30, 1982. All parties appeared and were afforded full opportunity to participate. Upon the entire record, including post-hearing briefs filed by the parties which have been carefully considered, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Auto Convoy Co., is limited partnership, with offices and places of business in various States of the United States and a place of business in San Antonio, Texas, is engaged in the shipping, transporting, and interlining by truck of new automobiles and trucks in intrastate and interstate commerce. During the 12-month period preceding issuance of the complaint herein, its gross revenue exceeded $500,000 and it received in excess of $50,000 for transporting vehicles directly to and from points located outside the State of Texas. It is admitted, and I find, that Respondent Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. STATUS OF LABOR ORGANIZATION

It is admitted, and I find, that Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

1. Background

Auto Convoy has terminals at nine locations in three States, i.e., Louisiana, Oklahoma, and Texas. Its terminals located at San Antonio and Houston, Texas, are the only operations immediately involved in this proceeding.

Respondent Employer is a party to the National Master Automobile Transporters Agreement (herein called the Agreement).[1] Its truckdrivers at the various terminals are represented by different Teamster Locals. Thus, the record reveals that the drivers at the San An-

[1] The Agreement was placed in the record as G.C. Exh. 12.

tonio terminal are represented by Respondent Union, Local 657, and that the drivers at its Houston, Texas, terminal are represented by Teamsters Local 988. At all times material, Raleigh Mull, Jr., has been the president and business manager of Respondent Union, and Preston Ketchman has been its secretary-treasurer.[2]

2. Cabrera's employment as a business agent and leave of absence

Jesse Cabrera was hired by Auto Convoy as a truckdriver on February 28, 1974. In August 1980, while in layoff status, he was offered and accepted a position as a business agent with Respondent Union.

Having accepted the business agent position, it was necessary for Cabrera to obtain a leave of absence from Auto Convoy to protect his right to return to driving if he decided he did not want to work for Respondent Union on a regular basis. Article 46 of the above-mentioned Agreement defines the rights of the parties in leave of absence situations stating (in pertinent part at p. 104):

> Absence Section 1. Time Off for Union Activities: The Employer agrees to grant necessary and reasonable time off, without discrimination, without pay and without loss of seniority, to any employee designated by the Union in writing for a period not to exceed sixty (60) days to attend a labor convention or to service on official Union business.
>
> Section 2. Leave of Absence: Any employee desiring leave of absence from his employment shall secure written permission from both the Local Union and Employer. The maximum leave of absence shall be for a total of one hundred and eighty (180) days.
>
> During the period of absence, the employee shall not engage in gainful employment in the same industry in classification covered by this Agreement. Failure to comply with this provision shall result in the complete loss of seniority rights for the employees involved. Inability to work because of proven sickness or injury shall not result in the loss of seniority rights. The employee must make suitable arrangements for continuation of Health and Welfare and Pension payments before the leave may be approved by either Local Union or Employer.

In 1980, R. Fischer, Jr., was Respondent Employer's director of labor relations. By letter dated August 13, 1980, Local 657's business manager, Mull, requested that Cabrera be given a 90-day leave of absence so he could work for Respondent Union.[3] By return letter dated August 15, 1980, Fisher granted the request.[4] On November 10, 1980, Mull requested an additional 90-day leave of absence of Cabrera.[5] By letter from Fisher to Mull dated November 13, Fisher granted the request, indicating the new 90-day leave of absence would start on November 10, 1980. Significantly, Fisher closed his November 13 letter stating:[6]

> This will account for the 180 days leave of absence which can be granted under the contract. If at the end of this 90 day leave of absence additional time would be required same will have to be cleared by an appropriate committee.

By letter dated January 20, 1981, Mull requested that Forest Guest, then Respondent Employer's assistant general manager, extend Cabrera's leave of absence an additional 90 days. Mull added a postscript which stated:[7] "Forrest I would appreciate your consideration of this. It would be a favor to me."

With specific regard to Cabrera's situation, Guest testified that he spoke with Cabrera, who was policing the Agreement at Auto Convoy during 1981, several times about his leave of absence indicating to Cabrera that he needed to "get his house in order and get the matter cleared up." According to Guest, the last such discussion occurred on November 3 or 4, 1981, at which time he contends he informed Cabrera they were both in technical error because Cabrera had not gone through the appropriate committee structure to extend his leave of absence. Guest claims Cabrera laughed at the time and said he would take care of it.[8]

On December 31, 1981, Guest sent Cabrera a certified letter (copy to Mull), the body of which stated:[9]

> It has come to our attention that the leave of absence granted to you has long passed applicable terms and problems are now arising with your status as far as Health Welfare and Pension and other considerations.
>
> Therefore, please be informed by this letter that after January 15, 1982 the Company will no longer recognize your leave of absence. Please make necessary arrangements and appropriate decisions regarding your employment status after January 15, 1982.

3. The Joint Council 58 election

On January 7, 1982, seven elected offices of Respondent Union were preparing to go to Houston, Texas, on January 8, where they were to vote for candidates for office on Joint Council 58, a body which coordinates certain matters of union interest such as relations with trucking companies, like Auto Convoy, which conduct business in a number of locations. Mull credibly testified

[2] It is admitted, and I find, that Mull and Ketchman are, and have been at all times material, agents of Respondent Union within the meaning of Sec. 2(13) of the Act. In addition, it is admitted, and I find, that C. Forest Guest is, and has been at all times material, a supervisor and an agent of Respondent Employer within the meaning of Sec. 2(11) and (13) of the Act.

[3] G.C. Exh. 2.

[4] G.C. Exh. 3.

[5] G.C. Exh. 4.

[6] G.C. Exh. 5.

[7] G.C. Exh. 6.

[8] While the Agreement is silent on the matter of leave of absence exceeding 180 days, Guest explained that Respondent Employer and Respondent Union cannot reach supplemental agreements during the term of the Agreement without approval of a superior joint body such as the Joint Area Arbitration Committee.

[9] G.C. Exh. 8.

that Joe Morgan, an International union vice president and the director of the Southern Conference of Teamsters, had indicated to him prior to the time under discussion that he felt each of the seven local unions which comprised Joint Council 58 should have representation on the elected body of the council, but that Local 988 had no elected official on Joint Council 58 while Mull's local had two i.e., Mull and Cabrera (both trustees). Mull indicated he agreed with Morgan and promised to seek to rectify the situation.

It is undisputed that several days prior to the Joint Council 58 election which was held on January 8, Mull indicated to Cabrera that he felt he should give up his seat on the executive board of Joint Council 58 to enable Mull and the principal officers of the seven member locals, including the president of Local 988, Richard Hammond, to occupy seats on the council.

According to Cabrera, he met with Preston Ketchman, secretary-treasurer of Local 657 on January 7 and Ketchman agreed he would nominate Cabrera for reelection to a trustee position on Joint Council 58 on the following day. Cabrera claims he subsequently telephoned a member of the local, Andy Garza, who had announced his intention to run for the position of president of Local 657 in the upcoming election of Respondent Union officers and asked him to second his nomination. Garza refused.[10]

On January 8, Cabrera, Ketchum, and Garza were to ride in a Local 657 vehicle from San Antonio to Houston. According to Cabrera, while he and Ketchman were on their way to pick up Garza, Ketchman told him that Mull had told him he was going to fire Cabrera if he ran for a seat on Joint Council 58.[11] When all the delegates arrived in Houston, they learned that four individuals nominated for positions on Joint Council 58 (the ones seeking the positions of president, vice president, recording secretary, and treasurer) were unopposed. Four persons were nominated for the remaining three trustee positions. They were: Cabrera, Mull, Jerry Cherry, and Richard Hammond.

Shortly before the voting started on January 8, Cabrera asked to speak with Mull. During the enusing conversation, Cabrera told Mull he had heard he was going to fire him and indicated that he had not intended to run, but he was going to because of the threat. Mull denied he had told anyone he was going to fire Cabrera, but told him they did have some problems and he thought they needed to talk about them. Cabrera then asked if Mull was against him because he was Mexican and stated he would make it easy on Mull that he would quit.[12]

When Cabrera and Mull reentered the room where the voting was to occur, Mull requested the floor and informed the delegates that he felt Local 988 should have representation on the executive committee and he therefore desired that those who were inclined to vote for him vote for the president of Local 988, Hammon. The election was held and Cabrera, Cherry, and Hammond were elected trustees.[13]

After the election, Mull thanked Cabrera for doing a job on him. Cabrera explained he would not have done it if he had not been threatened with being fired. Mull then suggested they go to talk to Ketchman, who was standing nearby. When they approached Ketchman, Mull asked if he had told Cabrera that he (Mull) had said he would fire him if he ran for trustee. Cabrera claims Ketchman admitted he had made the statement, and Mull claims Ketchman said he had not made the statement. I credit Mull.[14]

4. Cabrera's return to Auto Convoy

When Cabrera returned to San Antonio after the Joint Council 58 election, he telephoned Guest, informed him he was leaving Local 675 for political reasons, and asked if he could return to Auto Convoy as a driver. Guest indicated he could after he satisfied ICC requirements, i.e., took a physical exam and passed a driver's test.

On January 10, 1982, Cabrera went to Respondent Union and turned in his credit cards and the keys to his union automobile. On January 11 he reported for work as a driver at Respondent Employer's San Antonio terminal.

Bobby Denson, Local 657's steward at Auto Convoy's San Antonio terminal, testified that, when Cabrera returned to work, the drivers with more seniority than Cabrera were sympathetic to him, but the drivers with less seniority complained to him. He testified he mentioned the complaints to Mull and claims Mull told him to let it lay and see where it went. While all of Auto Convoy's San Antonio drivers worked during the week of January 11, 1982, several drivers, including one Charles Salinas who was immediately below Cabrera on Respondent Employer's systemwide seniority roster, were informed on Friday, January 15, that they would be laid off effective Monday, January 18. Denson testified that on Monday, January 18, Salinas approached him and asked if he could file a greivance because Cabrera was working while he was not. Denson claims he gave Salinas his interpretation of the Agreement and told him he could file a grievance if he wanted to. Thereafter, Denson and Salinas went to the Local 657 hall were Mull listened to

[10] Cabrera testified Garza told him Mull had cautioned him to stay out of the situation.

[11] Ketchman testified he did not agree to nominate Cabrera on January 7, and that he merely told him on January 8 that Mull was unhappy with him and he had better straighten his act out. I credit Cabrera as he was by far the more impressive witness.

[12] Cabrera testified Mull admitted during the conversation that he was thinking about firing him. Mull was the more impressive witness and I credit his version of the conversation. Despite the fact that I credit Mull's account of the conversation under discussion, I am convinced that Mull had previously told Ketchman he was going to fire Cabrera if he ran, and I am convinced that Ketchman conveyed the threat to Cabrera as the latter claims.

[13] For some unexplained reason, Hammond indicated before he was installed as a trustee that he did not desire to be a trustee.

[14] Ketchman gave a third version. He testified he told Cabrera on January 7 that Mull was upset and that he (Cabrera) had better clean up his act, and that he told Mull and Cabrera after the election that he had told Cabrera he had better clean up his act. I credit Cabrera's assertion that Ketchman agreed to nominate him for trustee on January 7, and as indicated, *supra*, I credit Cabrera's assertion that he was told Mull had threatened to fire him if he ran for trustee. Having concluded that Ketchman's testimony concerning the above matters is unreliable, I conclude his account of the above-described conversation is also unreliable. As between Cabrera and Mull, I found Mull to be the more impressive witness.

Salinas and thereafter informed him what the contract said, and told him he could file a grievance if he wanted to.[15] When Salinas left Local 657 after discussing his situation with Mull, he took a blank grievance form with him. He completed the form and filed a grievance placed in the record as General Counsel's Exhibit 10 on January 21, dating it January 18, 1982, so he could claim loss of wages for the entire week of January 18.

During the week of January 11, 1982, Cabrera's return to work after 17 months with full seniority was also discussed at Local 988 in Houston. Thus, the record reveals that a driver named Fulmer Duckworth, then temporarily on layoff who was working at Local 988 as an organizer under the supervisor of the Local's president Hammond, asked Local 988 business agent Raymond Canales if it was true that Cabrera had returned to work after 17 months with his full seniority. Canales testified he told Duckworth he did not know, but he would contact Respondent Employer's Roger Whitesides (Guest's assistant) and find out. Canales testified he then telephoned Whitesides, learned that Duckworth's suspicion was true, and he (Canales) informed Whitesides the employees did not feel the Agreement permitted such reinstatement and that grievances would be filed. Thereafter, on January 22, 1982, Duckworth filed a grievance protesting Cabrera's reinstatement with full seniority.[16]

Guest testified that his assistant, Whitesides, informed him on Monday, January 18, that he had received calls from business agents, terminal managers, and employees about the Cabrera situation and it appeared grievances would be filed. Guest claims Whitesides' comments caused him to review Cabrera's files and that review of them convinced him he had erred by permitting Cabrera to return to work with his full seniority. He testified he telephoned Mull and informed him he had heard grievances were to be filed over the Cabrera reinstatement. During the conversation Mull informed Guest that Salinas intended to file a grievance. Guest thereafter sought legal adivce by calling Albert Matheson, an employer association attorney, who advised him to terminate Cabrera to avoid economic consequences. Guest then called Mull back and informed him he was terminating Cabrera.

By letter dated January 19, 1982, which was handed to Cabrera when he returned from a trip to El Paso, Texas, on January 22, Guest informed Cabrera his leave of absence was invalid, he had lost his seniority, and that he was terminated effective January 20, 1982.[17]

After being notified he was terminated, Cabrera telephoned Mull to advise him he was filing a grievance to protest the termination. On January 24, 1982, before he actually filed the grievance on January 26, Cabrera asked Mull if he could have his grievance heard by the grievance committee which was to commence hearing cases in Florida on January 25. Mull advised him notice to the other local unions affected would have to be given and he would be unable to get the grievance on the agenda of the committee meeting in Florida.[18]

5. The disposition of Cabrera's grievance

Cabrera's grievance protesting his termination by Auto Convoy was heard in Brownsville, Texas, by the Southern Conference Automobile Transporters Grievance Committee during their session which extended from April 5 through April 7, 1982. Three union representatives and three employer representatives sat on the grievance committee. While none of the representatives were directly affiliated with Auto Convoy, Local 657, or Local 988, Albert Matheson, the attorney contacted by Guest before he decided to terminate Cabrera, chaired the committee. The issue considered was whether article 46, section 2, of the Agreement entitled Cabrera to reinstatement with full seniority. Mull, accompanied by Cabrera and Denson, represented Cabrera, and Guest presented Auto Convoy's case. Cabrera was permitted to participate in the proceeding and agreed at the conclusion of the meeting that he had been fairly represented. The decision of the committee was as follows:[19]

> DECISION:
>
> Based upon the facts and evidence presented in this case, the Committee finds that Mr. Cabrera did not have a valid leave of absence at the time he sought to return to work in January, 1982 because he had not compiled with Section 2 of Article 46 of the contract.
>
> In view of all the facts, including the fact that there was some confusion as to the proper way to seek a leave of absence, the Committee rules that Mr. Cabrera should be placed on a preferential list for hire as a driver by the Company. When hired, he shall have his original date of hire solely for fringe benefit purposes. His seniority for all other purposes shall be his first day worked as a driver when hired from a preferential list.

6. Contentions of the parties

The General Counsel contends the facts in this case reveal that Respondent Union violated Section 8(b)(1)(A) and (2) by threatening to fire Cabrera from his business agent position on January 7 and 8 because he elected to run for the position of trustee of Joint Council 58, and by thereafter retaliating when Cabrera did seek and win election to such office by causing Auto Convoy to discharge him.

In addition to claiming that the General Counsel has offered insufficient evidence to prove any of the violations alleged, Respondent Union contends no violation based on the January 7 and 8 events should be found because: (1) Cabrera was not engaged in protected activity

[15] Denson placed the date of the discussion at Respondent Union as January 18 while Salinas claimed it occurred on January 20. Mull testified he was aware that Salinas was considering filing a grievance when Guest telephone him on January 18 or 19. I find the conversation in question occurred on January 18 as claimed by Denson.

[16] G.C. Exh. 11. The original grievances filed by Salinas and Duckworth were completed by hand. Both were subsequently typed for administrative reasons.

[17] G.C. Exh. 9.

[18] Mull credibly testified that as seniority at Auto Convoy is systemwide, notice of all grievances involving seniority must be sent to all other locals which represented Auto Convoy drivers.

[19] See Resp. U. Exh. 5, p. 3.

when he sought to be elected as a trustee of Joint Council 58; (2) As Cabrera was an employee of Local 657 on January 7 and 8, any violation by Local 657 occurred in its capacity as an employer and no violation of Section 8(b) of the Act should be found. Finally, Respondent Union contends the Board should defer to the April decision rendered pursuant to the mandatory grievance procedure of the Agreement.

Respondent Employer contends that the record reveals it discharged Cabrera because he had no seniority rights under the Agreement when he was reinstated on January 11, 1982. It further claims that the General Counsel has failed to adduce evidence which reveals it fired Cabrera at Local 657's request as alleged.

II. ANALYSIS

A. *The Deferral Issue*

While the Board will defer to the grievance-arbitration procedure of the parties if (1) the proceedings appear to have been fair and regular, (2) all parties have agreed to be bound by the decision, and (3) the decision is not repugnant to the policies and purposes of the Act,[20] in *Raytheon Co.*, 140 NLRB 883 (1963), the Board modified the described doctrine to also require that the arbitrator has considered the unfair labor practice(s) in his decision before deferral is appropriate.

Deferral would clearly not be appropriate in the instant situation for two reasons. First, the record reveals that attorney Albert Matheson, who chaired the grievance committee, was consulted by Auto Convoy before Cabrera was discharged and he subsequently failed to excuse himself from the committee when the legality of Cabrera's discharge was considered by the committee. In the circumstances, it appears the proceedings were not "fair and regular." Second, the only issue considered by the grievance committee was whether Cabrera was entitled by the Agreement to reinstatement with full seniority on January 11, 1982; the grievance committee did not decide whether Respondent Union requested that the employee be discharged because he had elected, contrary to Mull's wishes, to run for the position of trustee of Joint Council 58.

For the reasons stated, I find that deferral to the April decision of the Southern Confrence Automobile Transporters Grievance Committee would be inappropriate.

B. *The Threat to Discharge Issue*

As indicated, *supra*, I have found that Respondent Union's secretary-treasurer, Ketchman, told Cabrera on January 7, 1982, that business manager Mull had stated he would fire Cabrera from his business agent position if he ran for trustee of Joint Council 58. I have further found that Mull denied, rather than reiterated the threat, on January 8.

With respect to Respondent Union's claim that Cabrera was not engaging in protected activity when he elected to run for the trustee position, Local 657 relies upon the Board's decision in *Shenago Inc.*, 237 NLRB 1355. There, the Board indicated that issues such as the one presented require ". . . balancing the employee's Section 7 right to engage in internal union affairs against the legitimacy of the union interest at stake in the particular case."

Mull credibly indicated during his testimony that he asked Cabrera not to run for the trustee position on the Joint Council 58 because the principal officers of the member locals normally served on the executive committee of the council and Local 988, the largest local in the council, had no representation on the council while Local 657 had two representatives on it. In the circumstances, I find that Mull had a legitimate interest in attempting to cause Cabrera to refrain from running for the trustee position. While Cabrera, as a Local 657 delegate, had a right to participate in the affairs of Joint Council 58,[21] he was, in his position as business agent, obligated to consider the legitimate opinions and advice of his superior, Business Manager Mull. It appears he chose not to consider Mull's opinion and advice on the Joint Council 58 matter and was, therefore, in a sense, an insubordinate employee.

In sum, having balanced Cabrera's right to seek election to a position on Joint Council 58 against Respondent Union's legitimate interest in seeking to place a Local 988 representative in the trustee position sought by Cabrera, I conclude Respondent Union's interest outweighs Cabrera's interest in seeking the trustee position. I therefore find that by threatening to fire Cabrera if he persisted in his effort to gain election to the trustee position under discussion, Respondent Union did not violate Section 8(b)(1)(A) and (2) of the Act as alleged. Assuming, *arguendo*, Respondent Union had no legitimate interest which would justify its attempt to cause Cabrera not to seek the position under discussion by threatening him with discharge, I would nevertheless refrain from finding the violation alleged as the threat was to fire him from his employment by Local 657. In my view, Respondent Union correctly argues the violation, if any, would have been an 8(a) rather than an 8(b) violation.

C. *The Alleged Respondent Union Request That Auto Convoy Terminate Cabrera*

In the absence of direct evidence which would reveal that Mull unlawfully requested that Cabrera be discharged by Auto Convoy, the General Counsel claims I should find that Mull's threat to fire Cabrera if he ran for the Joint Council 58 trustee position, viewed in conjunction with record evidence which reveals that neither Mull nor Guest knew when the latter decided to fire Cabrera, that Salines was going to file a grievance, and other evidence which reveals that Mull and Guest were close friends warrants an inference that Cabrera was terminated at Mull's request because he ran for and obtained the trustee position. I find no merit in his contentions.

The actual picture portrayed by the instant record is one which Mull threatened to fire Cabrera from his business agent's position rather than any position he held

[20] *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955).

[21] The record reveals that Cabrera was an elected trustee of Local 657, and was therefore one of the delegates to Joint Council 58.

with Auto Convoy. As I have found, *supra*, Salinas visisted Mull on Monday, January 18, rather than Wednesday, January 20, to indicate that he was inclined to file a grievance because Cabrera, the man immediately above him on the seniority roster, was reinstated with full seniority. Finally, while Guest admitted that he and Mull enjoyed a close business relationship, he also indicated they were not social friends. In short, the evidence offered by the General Counsel does not support the inferences he would have me make.

In the final analysis, the record simply reveals that Mull told Guest, before the latter finalized his decision to terminate Cabrera, that Salinas intended to file a grievance to protest the fact that Cabrera was reinstated with full seniority after he had been a business agent for 17 months. The record fails to reveal that Mull said or did anything further to cause Auto Convoy to terminate Cabrera. In the circumstances, I find that the General Counsel has failed to offer sufficient evidence to show that Mull or anyone in Local 657 requsted that Auto Convoy fire Cabrera.[22]

D. *The Alleged 8(a)(1) and (3) Violation by Auto Convoy*

The consolidated complaint alleges that Respondent Employer discharged Cabrera on January 20, 1982, because Respondent Union, through Mull, complained about the reinstatement of Cabrera and warned Auto Convoy that grievance would be filed regarding Cabrera's reinstatement.

As indicated above, the General Counsel failed to offer any direct evidence which would reveal that Mull complained to anyone at Auto Convoy because Cabrera had been reinstated. While I have found that Mull did tell Guest, before the latter made his final decision to discharge Cabrera, that Salinas intended to file a grievance protesting Cabrera's reinstatement with full seniority, I note that Guest indicated during his testimony that he was unaware at the time that Mull was unhappy with Cabrera because of the Joint Council 58 matter.

In sum, the record in this case reveals that Mull and others informed Guest, directly or through his assistant, Whitesides, after Cabrera was reinstated, that grievances would be filed to protest the fact that Cabrera had been reinstated with full seniority after he had acted as business agent for 17 months. As article 46, section 2, of the applicable contract reveals leaves of absences are limited to 180 days, and Guest testified he elected to discharged Cabrera of his own volition to avoid monetary claims by other drivers, a valid ground for the discharge existed. In the circumstances, I find that the General Counsel has offered insufficient evidence to show Respondent Employer discharged Cabrera because Local 657 requested that it take such action.

Conclusions of Law

1. Auto Convoy Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent Union has not engaged in conduct which violates Section 8(b)(1)(A) and (2) of the Act as alleged in the consolidated complaint.
4. Respondent Employer has not engaged in conduct which violates Section 8(a)(1) and (3) of the Act as alleged in the consolidated complaint.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[23]

The complaint is dismissed in its entirety.

[22] Cabrera testified that in July 1982 Mull attempted to cause him to run for office on his (Mull's) slate by telling him he had nothing to do with him getting fired by Auto Convoy—that Canales and Hammond did. While the instant record does not cause me to even suspect that Mull asked Guest to fire Cabrera, Guest's equivocation at points, and the described Cabrera testimony, cause me to suspect that Canales and/or Hammond may have been implicated in the matter.

[23] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.